S. B. C. W. P. NO.869/2002
(Partu Vs. State & Ors.)

DATE OF ORDER : 05.08.2004

HON'BLE SHRI N.P.GUPTA,J.

Mr.S.L.Jain for the petitioner.
Smt.Kusum Rao }
Mr.Parikshit Nayak } for the respondents.

Heard learned counsel for the parties.

The only submission made by the learned counsel for the petitioner is that Annexure-5 was a notice issued by the Chief Executive Officer, fixing a meeting for consideration of No Confidence Motion on 25.2.202 at 12 Noon, as a notice for No Confidence Motion along with No Confidence Motion was given on 6.2.2002, while vide Ex.4 of the same date, a communication was sent to the Sarpanch, and copy endorsed to the petitioner conveying that eight ward members on 6.2.2002 have submitted a notice of No Confidence Motion, and therefore, under Section 37(3)(1), a notice of No Confidence Motion and the copy of the motion is being forwarded, while Annexure-3 is the only document, which was enclosed with these communications, Annexures-4 and 5, and a look at Annexure-3 shows that it is only a notice of No Confidence Motion purportedly enclosing therewith the No Confidence Motion, while as a matter of fact, no No Confidence Motion was enclosed therewith. It is contended that it appears that on 1st of February, 2002, a complaint was made to the District Collector, Banswara raising certain grievances against the petitioner, and on that basis, loss of confidence was expressed against the petitioner, but then, that complaint was forwarded by the Collector to the Chief Executive Officer on 4th February 2002 itself, and along with Annexure-3, no No Confidence Motion was enclosed.

Vide order of this Court dt. 23.10.2002, the record with regard to oath of Sarpanch taken by the petitioner as also the record of handing over charge to the petitioner was requisitioned, as it appears that at that time, the argument made was on the anvil of the petitioner having not completed two years' period before moving of the notice, Annexure-3. However, in compliance thereof, the record has been received, and a perusal thereof shows that on 6.2.2002, a notice was submitted, copy whereof has been produced as Annexure-3. Though, it is mentioned therein that copy of the proposed No Confidence Motion is made available herewith (प्रस्तावित अविश्वास प्रस्ताव की प्रतिलिपि भी उपलब्ध करते हैं।),

but then, the endorsement of presentation made by the Chief Executive Officer only reads as under:-

"आज दि-6/2/02 2 pm को उपसरपंच श्री रामचन्द्र एवं वार्ड पंचों ने अविश्वास प्रस्ताव प्रस्तुत किया"

Then the endorsement of presentation is signed and dated. Thus, it appears that this notice itself had been taken to the No Confidence Motion. That apart, the next paper available on the file is the original of the letter/complaint made to the Collector, Banswara, copy whereof has been produced with the writ petition as Annexure-2. This doesn't bear any date, but then, it bears the original endorsement of presentation dt. 4.2.2002 marking it to Additional Chief Executive Officer of Zila Parishad. Then the third paper is a document purporting to be "प्रस्ताव के संबंध में" that raises some grievance about the ग्रुप सचिव having not given the copy of resolution no.3 of the Gram Panchayat dt. 5.2.2002, and the signatories are witness to it as ward Panchas.

A look at the provisions of Section 37(2) would show that the requirement is that a written notice of intention to make the motion in such form as may be prescribed, signed by requisite number of members "**together with a copy of the proposed motion"** is required to be delivered in person by anyone of the members signing the notice to the competent authority.

In the present case, as noticed above, though original of Annexure-3 may fulfill the requirement of a written notice to make motion, but then it is not "together with a copy of the proposed motion.., delivered in person.." If at all the complaint to the Collector were to be construed as motion of no confidence, then it was presented way-back on 4.2.2002, and had been forwarded in original by the Collector to the Chief Executive Officer on that day itself. Significantly, even a copy thereof has not been again enclosed with the notice (Annexure-3) so as to fulfill the requirement of "together with the copy of the proposed motion". It is a different story that according to the petitioner, the notice, Annexure-4 issued by the Chief Executive Officer was enclosed with Annexure-3 only, and with no other "motion of no confidence".

In that view of the matter, it is clear that all that was done was a notice, Annexure-3 was given, but then, it was not "together with a copy of the proposed motion..", and therefore, the Chief Executive Officer had no jurisdiction whatever to issue the notice, Annexure-4, fixing any meeting.

The net result is that the writ petition is allowed. The notice, Annexure-4, and all proceedings taken thereupon are quashed.

(N.P.GUPTA),J.

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